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BOOK REVIEWS.

THE TRUE DOCTRINE OF ULTRA VIRES. By REUBEN A. REESE, ESQ., of the Colorado Bar. Chicago: T. H. Flood & Co. 1897.

There have been of late years numerous treatises on special branches and doctrines of the law, but until Mr. Reese's little volume appeared no American had written a book on the doctrine of *ultra vires*. Largely owing to the contradictory positions assumed by the courts, and the illogical results often reached, the subject is not altogether easy of brief, orderly and clear treatment, especially when it is separated from the general law of corporations. Mr. Reese is, therefore, doubtless entitled to the lenient judgment of his readers.

In a little over three hundred pages of text, the writer considers the application of the doctrine to the powers of private, *quasi*-public and municipal corporations. "The True Doctrine of *Ultra Vires*," it appears, is the "special capacities" doctrine, which regards the corporation as restricted to the business and the mode of its exercise indicated in its charter or the laws of its creation, and as possessing no power beyond those conferred. All *ultra vires* acts, he believes, should be regarded as absolutely void and of no effect. He attacks with force the illogical position of those courts which, while nominally adhering to the *special capacities* doctrine, and declaring *ultra vires* contracts to be void, nevertheless, when they are executed permit a recovery upon the contract. The large number of cases marshalled to the support of the writer's various propositions indicates extensive research. A few important cases have been omitted, however, *e. g.*, *Wright v. Pipe Line Co.*, 101 Pa. 204 (1882); *Insurance Co. v. McClelland*, 9 Colo. 11 (1885); *Slater Woolen Co. v. Lamb*, 143 Mass. 420 (1887); *Bath Gas Light Co. v. Claffy et al*, 45 N. E. 390 (1896).

The view, which seems to be gaining ground, that a contract, though *ultra vires* should be treated as enforceable *inter partes*, the state exacting the proper penalty from the corporation, is not considered by Mr. Reese, except by inference in advocating a strict adherence to the doctrine of *special capacities*. A feature of the book is a chronological review of the doctrine as illustrated by the cases. A number of the leading cases are synopsisized and commented on. The synopses, while apparently generally accurate, are not in all instances quite as exact as one might wish. For instance, in the summary of *Pearce v. Railroad*, 21 How. 441 (1858), no reference is made to the fact that the note sued on was in the hands of a holder in good faith and for value, and that in the opinion of the Supreme Court of the United States not even the

importance of free circulation of commercial paper justified a recovery on a note issued in payment of an *ultra vires* obligation, though in the next case but one: *Monument National Bank v. Globe Works*, 101 Mass. 57 (1869), the circumstance that a recovery was permitted on a note given in excess of the powers of the corporation and in the hands of an innocent purchaser for value, is the only fact stated.

It is at least open to question whether apologetic matter, particularly when it has reference to style, should not be avoided. According to the preface, "In style and composition neither classical precision, stilted phraseology, nor laborious effort at 'fine writing' has been attempted." Observing incidentally that few legal writers err on the side of precision, the presence of such paragraphs as the following raises a doubt as to whether the author has quite realized his aim of stylistic simplicity. "This uncertainty and confusion [in construing corporate charters], however, has not arisen, it is respectfully submitted, by reason of any misapprehension of the correct construction which should be placed upon the doctrine, but rather from a growing tendency of the courts of this country, a spreading of the granger element in our state courts—to disregard purely legal rights and the rules of law controlling them, unwisely tempering their questionable judgments with even more questionable and unstrained mercy, and basing their findings upon the equitable rights of the parties, whatever may be the cause of action, as they appear to the particular court having jurisdiction of the subject-matter, the application of the doctrine being dependent, in a great measure, upon the temperament and discretion of the judge before whom the defence of *ultra vires* is urged. While the manner of adjusting legal complications may be commendable in a certain sense, it cannot be regarded as judicial wisdom by those who desire the fountains of legal jurisprudence maintained in all their positive purity and vigor, undefiled by the wanton influence of class prejudice, or the natural flow thereof diverged by the misguided inspiration of political zeal." *Walter C. Douglas, Jr.*